IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10023 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHIRAI SALT MANUDACTURING CO-OP SOCIETY LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10023 of 2004

MR KETAN D SHAH for Petitioner No. 1

Mr. PD Bhate,AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/12/2004

ORAL JUDGEMENT

Today,the matter is placed on Board for fixing early date of hearing. However, in view of disposal of Special Civil Application No. 10714 of 2004 which was ordered to be heard along with the present Special Civil Application, the present Special Civil Application is finally heard today with the consent of the parties.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the respondent dated 31st May 2004 in rejecting the claim of the petitioner pursuant to inclusion of land of the petitioner into the sanctuary of wild donkeys (Ghudkhar). It is the contention on behalf of the petitioner that the land bearing Survey No. 1007 situate at Village Moti Chirai came to be declared as sanctuary of wild donkeys by issuance of notification dated 12th January 1973 under Section 18 of the Wild Life Protection Act, 1972. It is the case of the petitioner that the petitioner is the lessee and therefore he is entitled to some compensation as the land in question is included into the sanctuary. However, by order dated 31st May 2004 the said claim of the petitioner came to be rejected. Being aggrieved and dissatisfied with the same, the present Special Civil Application has been filed.

3. Shri Ketan Shah, learned advocate appearing for the petitioner has submitted that before passing the impugned order dated 31st May 2004 no opportunity of being heard has been given and that the impugned order is a non-speaking order and therefore requested to allow the present Special Civil Application and remand the matter to the respondent for deciding the same afresh in accordance with law.

4. Shri PD Bhate, learned AGP has however submitted that number of opportunities were given to the petitioner and as many as 7 notices were served upon the petitioner. However, the petitioner did not remain present and therefore the impugned order came to be passed.

5. Heard the learned advocate appearing for the parties. An identical question had arisen in Special Civil Application No. 10714 of 2004, and this Court [Coram: Mr. K.S. Jhaveri, J.] by judgment and order dated 5.11.2004 allowed the said Special Civil Application and remanded the matter to the respondent for deciding the same afresh in accordance with law as the said order was a non-speaking order and had been passed without giving opportunity to the petitioner.

6. Considering the judgment and order dated 5.11.2004 passed by the learned Single Judge of this Court rendered in Special Civil Application No. 10714 of 2004 and also considering the impugned order dated 31st May 2004, the Special Civil Application is required to be allowed only on the ground that the impugned order is a

non-speaking order and that the same has been passed without giving opportunity to the petitioner. Accordingly, the impugned order dated 31st May 2004 is quashed and set aside. The matter is remanded to the respondent, Deputy Collector for deciding the claim of the petitioner afresh in accordance with law and on merits after giving opportunity to the petitioner. This Court has set aside the impugned order dated 31st May 2004 only on the ground that the same is a non-speaking order and the same has been passed without hearing the petitioner. This Court has not expressed anything on merits either way. Rule is made absolute with no order as to costs.

rmr. [M.R. Shah, J.]